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6 CITY OF OAKLAND, WAYNE
TUCKER, ANWON JONES,
7 BERTAND ORTIZ and
JASON SENA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 WILLIAM CALDWELL and
LEONA SAVOY,

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13 Plaintiff,

14 vs.

15 The CITY OF OAKLAND, a municipal
corporation; WAYNE TUCKER, in his
capacity as Chief of Police for the CITY
16 OF OAKLAND; ANWON JONES,
BERTRAND ORTIZ and JASON SENA,
17 individually, and in their capacities as
police officers for the CITY OF OAKLAND;
18 and OAKLAND police officers DOES 1-20,
inclusive,

19 Defendants.
20
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Case No. C 06-07322 MHP

STIPULATION AND [PROPOSED]
PROTECTIVE ORDER

22 Plaintiffs WILLIAM CALDWELL and LEONA SAVOY by and through their attorney
23 JOHN L. BURRIS. individually and on behalf of THE LAW OFFICES OF JOHN L.

24 BURRIS; and Defendants CITY OF OAKLAND, WAYNE TUCKER , ANWON JONES,
25 BERTAND ORTIZ and JASON SENA, by and through their attorney, STEPHEN Q.
26

1 ROWELL, hereby stipulate to the following protective order:

2 1. DEFINITIONS

3 1.1 Party: any party to this action, including all of its officers, directors,
4 employees, consultants, retained experts, and outside counsel (and their support staff).

5 1.2 Disclosure or Discovery Material: all items or information, regardless of
6 the medium or manner generated, stored, or maintained (including, among other things;
7

8 1.3 "Confidential" Information or Items: information (regardless of how
9 generated, stored or maintained) or tangible things qualify for protection under standards
10 developed under F.R.Civ. P. 26(c). This material subject to this stipulation is the Oakland
11 Police Department Internal Affairs Investigative File 06-173.
12

13 1.4 Receiving Party: a Party that receives Disclosure or Discovery
14 Material from a Producing Party.

15 1.5 Producing Party: a Party or non-party that produces Disclosure or
16 Discovery Material in this action.

17 1.6. Designating Party: a Party or non-party that designates information
18 or items that it produces in disclosures or in responses to discovery as "Confidential".
19

20 1.7. Protected Material: any Disclosure or Discovery Material that is
21 designated as "Confidential" or as "Highly Confidential-Attorneys' Eyes Only."

22 1.8. Outside Counsel: attorneys who are not employees of a Party but
23 who are retained to represent or advise a Party in this action.

24 1.9. House Counsel: attorneys who are employees of a Party.

25 1.10. Counsel (without qualifier): Outside Counsel and House Counsel (as
26 well as their support staffs).

1.11. Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as an consultant n this action and who is not a past or a current employee of a Party and who, at the time of retention, is not anticipated to become an employee of a Party. This definition includes a professional jury or trial consultant retained in connection with this litigation.

1.12. Professional Vendors: person or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

2. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

3. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or court order otherwise directs.

4. DESIGNATING PROTECTED MATERIAL

4.1 F.R.Civ. P. 26(c). The information sought to be protected must be properly qualified for protection under F.R.Civ. P. 26(c). Counsel shall not designate any discovery material "CONFIDENTIAL" without first making a good faith determination that protection is warranted.

4.2 Manner and Timing of Designations. Except as otherwise provided in

1 this Order (see, e.g., second paragraph of section 4.2(a), below), or as otherwise
 2 stipulated or ordered, material that qualified for protection under the Order must be clearly
 3 so designated before the material is disclosed or produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (apart from transcripts of depositions
 6 or other pretrial or trial proceedings), that the Producing Party affix the legend
 7 "CONFIDENTIAL" at the top of each page that contains protected material.

8 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 9 that the Party or non-party offering or sponsoring the testimony identify on the record,
 10 before the close of the deposition, hearing, or other proceeding. Only those portions of
 11 the testimony that are appropriately designated for protection within the 20 days shall be
 12 covered by the provisions of this Stipulated Protective Order.

13 Transcript pages containing Protected Material must be separately bound by
 14 the court reporter, who must affix to the top of each such page the legend
 15 "CONFIDENTIAL" as instructed by the Party or non-party offering or sponsoring the
 16 witness or presenting the testimony.

17 (c) for information produced in some form other than documentary, and for
 18 any other tangible items, that the Producing Party affix in a prominent place on the exterior
 19 of the container or containers in which the information or item is stored the legend
 20 "CONFIDENTIAL".

21 4.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
 22 failure to designate qualified information or items as "Confidential" does not, standing
 23 alone, waive the Designating Party's right to secure protection under this Order for such
 24 material. If material is appropriately designated as "Confidential" after the material was
 25 initially produced, the Receiving Party, on timely notification of the designation, must make
 26 reasonable efforts to assure that the material is treated in accordance with the provisions

1 of the Order.

2 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 5.1 Timing of Challenges. Unless a proper challenge to a Designating
4 Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness,
5 unnecessary economic burden, or a later significant disruption or delay of the litigation, a
6 Party does not waive its right to challenge a confidentiality designation by electing not to
7 mount a challenge promptly after the original designation is disclosed.

8 5.2 Meet and Confer. A Party that elects to initiate a challenge to a
9 Designating Party's confidentiality designation must do so in good faith and must begin the
10 process by conferring directly (in voice to voice dialogue; other forms of communication are
11 not sufficient) with counsel for the Designating Party. In conferring, the challenging Party
12 must explain the basis for its belief that the confidentiality designation was not proper and
13 must give the Designating Party an opportunity to review the designated material, to
14 reconsider the circumstances, and, if no change in designation is offered, to explain the
15 basis for the chose designation. A challenging Party may proceed to the next stage of the
16 challenge process only if it has engaged in this meet and confer process first.

17 5.3 Judicial Intervention. A Party that elects to press a challenge to a
18 confidentiality designation after considering the justification offered by the Designating
19 Party may file and serve a motion under Civil Rule 7 (and in compliance with Civil Local
20 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the
21 basis for the challenge. Each such motion must be accompanied by a competent
22 declaration that affirms that the movant has complied with the meet and confer
23 requirements imposed in the preceding paragraph and that sets forth with specificity the
24 justification for the confidentiality designation that was given by the Designating Party in
25 the meet and confer dialogue.

26 The burden of persuasion in any such challenge proceeding shall be on the

1 Designating Party. Until the court rules on the challenge, all parties shall continue to afford
 2 the material in question the level of protection to which it is entitled under the Producing
 3 Party's designation.

4 6. ACCESS TO AND USE OF PROTECTED MATERIAL

5 6.1 Basic Principles. A Receiving Party may use Protected Material that is
 6 disclosed or produced by another Party or by a non-party in connection with this case only
 7 for prosecuting, defending, or attempting to settle this litigation. Such Protected material
 8 may be disclosed only to the categories of persons and under the conditions described in
 9 this Order. When the litigation has terminated, a Receiving Party must comply with the
 10 provisions of section 10, below (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a
 12 location and in a secure manner that ensures that access is limited to the persons
 13 authorized under this Order.

14 6.2 Disclosure of "CONFIDENTIAL: Information or Items." Unless
 15 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
 16 Party may disclose any information or item designated CONFIDENTIAL only to:

17 (a) employees of the Receiving Party to whom disclosure is reasonably
 18 necessary for this litigation and who have signed the "Agreement to Be Bound by
 19 Protective Order" (Exhibit A);

20 (b) experts (as defined in this Order) of the Receiving Party to whom
 21 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
 22 to Be Bound by Protective Order" (Exhibit A);

23 (c) the Court and its personnel;

24 (d) court reporters, their staffs, and professional vendors to whom disclosure
 25 is reasonably necessary for this litigation and who have signed the "Agreement to Be
 26 Bound by Protective Order" (Exhibit A);

1 (e) during their deposition, witnesses in the action to whom disclosure is
 2 reasonably necessary and who have signed the "Agreement to Be Bound by Protective
 3 Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions
 4 that reveal Protected Material must be separately bound by the court reporter and may not
 5 be disclosed to anyone except as permitted under this Stipulated Protective Order.

6 (f) the author the document or the original source of the information.

7
 8 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 9 **PRODUCED IN OTHER LITIGATION**

10 If a Receiving Party is served with a subpoena or an order issued in other
 11 litigation that would compel disclosure of any information or items designated in this action
 12 as "CONFIDENTIAL" the Receiving Party must so notify the Designating Party, in writing
 13 (by fax, if possible) immediately and in no event more than three court days after receiving
 14 the subpoena or order. Such notification must include a copy of the subpoena or court
 15 order.

16 The Receiving Party also must immediately inform in writing the Party who
 17 caused the subpoena or order to issue in the other litigation that some or all the material
 18 covered by the subpoena or order is the subject of this Protective Order. In addition, the
 19 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the
 20 Party in the other action that caused the subpoena or order to issue.

21 The purpose of imposing these duties is to alert the interested parties to the
 22 existence of this Protective Order and to afford the Designation Party in this case an
 23 opportunity to try to protect its confidentiality interests in the court from which the
 24 subpoena or order issued. The Designating Party shall bear the burdens and the
 25 expenses of seeking protection in that court of its confidential material—and nothing in
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1 these provisions should be construed as authorizing or encouraging a Receiving Party in
2 this action to disobey a lawful directive from another court.

3 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has
5 disclosed Protected Material to any person or in any circumstance not authorized under
6 this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
7 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
8 copies of the Protected Material, (c) inform the person or persons to whom unauthorized
9 disclosures were made of all of the terms of this Order, and (d) request such person or
10 persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached
11 hereto as Exhibit A.

12 9. FILING PROTECTED MATERIAL. Without written permission from the
13 Designating Party or a court order secured after appropriate notice to all interested
14 persons, a Party may not in the public record in this action any Protected material. A
15 Party that seeks to file under seal any Protected Material must comply with Civil Local
16 Rule 79-5. In addition to placing the documents in a sealed envelope with instructions
17 that the envelope is not to be opened absent further order of the court, the envelope
18 should be labeled to identify title of the case, the case number, and the title of the
19 document.

20 10. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by
21 the Producing Party, within sixty days after the final termination of this action, each
22 Receiving Party must return all Protected Material to the Producing Party, as used in this
23 subdivision, "all Protected Material" includes all copies, abstracts compilations, summaries
24 or any other form of reproducing or capturing any of the Protected Material. With
25 permission in writing from the Designating Party, the Receiving Party may destroy some or
26 all of the Protected Material instead of returning it. Whether the Protected Material is

1 returned or destroyed, the Receiving Party must submit a written certification to the
2 Producing Party (and, if not the same person or entity, to the Designating Party) by the
3 sixty day deadline that identifies (by category, where appropriate) all the Protected
4 Material that was returned or destroyed and that affirms that the Receiving Party has not
5 retained any copies, abstracts, compilations, summaries or other forms of reproducing or
6 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
7 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
8 memoranda, correspondence or attorney work product, even if such materials contain
9 Protected Material. Any such archival copies that contain or constitute Protected Material
10 remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

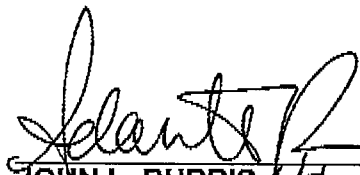
11 **11. MISCELLANEOUS**

12 **Right to Further Relief.** Nothing in this Order abridges the right of any
13 person to seek its modification by the Court in the future.


14 **12. JURISDICTION.** The Court shall retain jurisdiction over any matter
15 covered by this Stipulation and Order for 24 months after the final termination of this
16 action.

17 **IT IS SO STIPULATED.**

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19 Dated: 4/17/08


JOHN L. BURRIS
Attorneys for Plaintiffs

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21
22 Dated: 4/22/08


STEPHEN Q. ROWELL
Attorney for Defendants
CITY OF OAKLAND, WAYNE TUCKER,
ANWON JONES, BERTAND ORTIZ and
JASON SENA

1
2 PURSUANT TO STIPULATION, IT IS SO ORDERED

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4 DATED: 4/23/2008

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7 MARILYN
Judge Un



EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty
 of perjury that I have read in its entirety and understand the Stipulated Protective Order
 that was issued by the United States Court for the Northern District of California on
 _____ [date] in the case of WILLIAM CALDWELL and
 LEONA SAVOY v. CITY OF OAKLAND, et al., Case No. C06-07322 MHP. I agree to
 comply with and be bound by all the terms of this Stipulated Protective Order and I
 understand and acknowledge that failure to so comply could expose me to sanctions
 and punishment in the nature of contempt. I solemnly promise that I will not disclose in
 any manner any information or item that is subject to this Stipulated Protective Order to
 any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this
 action.

I hereby appoint _____ [print or type full
 name] of _____ [print or type full address
 and telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective Order.

1 Date: _____

2 City and State where sworn and signed: _____

3 Printed name: _____
4 [printed name]

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6 Signature: _____
7 [signature]

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